
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**MOTION TO VACATE, SET ASIDE, OR CORRECT
SENTENCE PURSUANT TO 28 U.S.C. § 2255**

FILED
IN CLERKS OFFICE
2010 APR 29 P 1:48
U.S. DISTRICT COURT
DISTRICT OF MASS.

**ESTHER ARIAS
vs.
UNITED STATES OF AMERICA**

**CASE NO.
1:06 Cr 10305**

06 Cr 10092

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

ESTHER ARIAS
Petitioner,

-vs-

UNITED STATES OF AMERICA
Respondent.

CASE NO: 1:06 CR 10305

U.S. DISTRICT COURT
DISTRICT OF MASS.

2010 APR 29 P 1:48

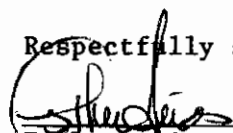
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PETITIONER'S REQUEST FOR LEAVE TO RESPOND TO ANY ARGUMENT
THE GOVERNMENT MAY SUBMIT IN OPPOSITION TO
THE PETITIONER'S MOTION TO VACATE, SET ASIDE, OR
CORRECT A SENTENCE PURSUANT TO 28 U.S.C. § 2255 & FOR APPOINTMENT
OF COUNSEL IN THE INTEREST OF JUSTICE

COMES NOW, the Petitioner, Esther Arias, pro se, and respectfully asks this Honorable Court to grant her time in which to file a memorandum to any argument the Government may submit in opposition to this Motion pursuant to 28 U.S.C. § 2255. The Petitioner respectfully requests a period of 30 to 60 days in which to reply. The Petitioner would like a chance to back up all contentions brought forth within this motion. Arias also would like to incorporate this motion for appointment of counsel in the interest of her liberty and justice.

Wherefore, the Petitioner, Esther Arias, prays this Honorable Court will grant the Petitioner's request. and any other relief this Honorable Court deems appropriate.

Respectfully submitted,



Esther Arias

**MOTION UNDER 28 U.S.C. §2255 TO VACATE SET ASIDE OR CORRECT A SENTENCE
BY A PERSON IN FEDERAL CUSTODY**

United States District Court for the District of Massachusetts

Name of Movant Esther Arias

Prisoner No. 26214-038 Case No. 1:06 CR 10305 001 ML

UNITED STATES OF AMERICA

V. ESTHER ARIAS

UNITED STATES OF AMERICA

(name under which convicted)

MOTION

Name and location of Court which entered the judgment of conviction under attack _____
District of Massachusetts

Date of judgment of conviction April 22, 2008

Length of sentence 144 months consecutive to case #10092 of (5 years)

Name of offense involved (all counts) _____

What was your plea? (Check one)

- a) Not guilty ☐
- b) Guilty ☐
- c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment and a not guilty plea to another count or indictment, give detail: _____

If you pleaded not guilty, what kind of trial did you have? (Check one)

- a. Jury ☒
- b. Judge only ☐

Did you testify at trial?

Yes ☒ No ☐

Did you appeal from the judgment of conviction?

Yes ☒ No ☐

If you did appeal, answer the following:

- a. Name of court United States Court of Appeals for the First Circuit
- b. Result affirmed
- c. Date of result March 25, 2009

Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

If your answer was "yes" to the last question, give the following information:

- a. 1. Name of court Supreme Court of the United States
2. Name of proceeding Writ of Cert
3. Grounds raised Whether the district court imposed an unreasonable sentence. #2 Whether the government's closing argument deprived Arias of a fair trial.
4. Did you receive an evidentiary hearing on your petition, application, or motion?
Yes ☐ No ☒
5. Result Cert denied
6. Date of result _____
- b. As to any second petition, application, or motion?
 1. Name of court _____
 2. Name of proceeding _____
 3. Grounds raised _____
 4. Did you receive an evidentiary hearing on your petition, application, or motion?
Yes ☐ No ☐
 5. Result _____
 6. Date of result _____

- a) Conviction obtained by a plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- b) Conviction obtained by use of coerced confession.
- c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

- d) Conviction obtained by use of evidence pursuant to an unlawful arrest.
- e) Conviction obtained by violation of the privilege against self-incrimination.
- f) Conviction obtained by a violation against the protection against double jeopardy.
- g) Conviction obtained by action of a grand jury which was unconstitutionally selected and impaneled.
- h) Denial of effective assistance of counsel.
- i) Denial of right to appeal.

A. Ground one: Denial of Effective Assistance of Counsel

Supporting FACT (state briefly without citing cases or law) _____

SEE ATTACHED

B. Ground two: Due Process Violation

Supporting FACT (state briefly without citing cases or law) The Government must prove the defendant knew the means of identification actually belonged to another person.

See Figueroa v United States May 04, 2009.

In the instant case the Government did not prove identification belonged to another

C. Ground three: _____

Supporting FACT (state briefly without citing cases or law) _____

D. Ground four: _____

Supporting FACT (state briefly without citing cases or law) _____

If ANY of these grounds were not previously presented, state briefly what grounds were not presented and give your reasons for not presenting them: _____

Do you have any petition or appeal now pending in any court as to the judgment under attack:

Yes ☐ No ☐

Give the names and addresses, if known, of each attorney who represented you in the following stages of the judgment attacked herein.

- a) At preliminary hearing: John Palmer Moss
- b) At arraignment and plea: same
- c) At trial: Jose Espinosa
- d) At sentencing: pro se/Espinosa
- e) On appeal: James Michael Fox
- f) In any post-conviction proceeding: pro se
- g) On appeal from any adverse ruling in a post-conviction proceeding: _____

Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

Do you have a future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

- a) If so, give name and location of court which imposed sentence to be served in the future: _____
- b) Give date and length of the above sentence: _____

c) Have you filed, or do you contemplate filing any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

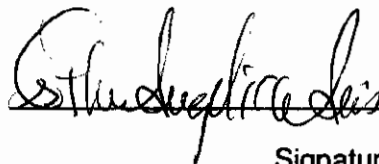
Therefore, movant prays that the Court grant him/her all the relief to which he/she may be entitled in this proceeding.

Signature of attorney (if any)

I swear under penalty of perjury that the foregoing is true and correct. Executed on:

4-19-10

Date



Signature of Movant

**SUPPORTING FACTS FOR GROUNDS RAISED WITHIN
PETITIONER'S MOTION PURSUANT TO 28 U.S.C. § 2255**

GROUND 1: Ineffective Assistance of Counsel

Supporting Facts: It has long been established that a person who is being accused of a crime has a right to effective assistance of counsel through all critical stages of the proceedings being held against them. This fact was established in the U.S. Constitution under the Sixth Amendment. The Petitioner in this case was offered an extremely low standard of assistance for numerous reasons which are critical to the outcome of the proceedings held against her, thus the conviction was obtained through a violation of the Petitioner's Fifth and Sixth Amendment and Fifth Amendment rights under the Constitution.

Counsel for Petitioner, Mr. Espinosa, was ineffective from the start of the proceedings involved in this petition as well as her consecutive sentence. He failed to investigate, refused to call witnesses with exculpatory information, did not call experts, refused to provide the Government with the requested alibi on the specific day, and did not make Aria privy to the evidence the Government had against her. On her 5 year consecutive sentence, he failed to inform the Court about witness Familia's false testimony (testimony Attorney Espinosa knew was false), he refused to obtain and provide the Court at trial with State records showing Arias was incarcerated at the time of certain crimes she is accused of and refused to speak in the Petitioner's defense when representation was most crucial. Trial counsel, Espinosa, slept through critical testimony of key witnesses and deprived Petitioner of the right to effective assistance of counsel, even in light absent of identifying any specific errors resulting in prejudice, prejudice arose from the fact that during critical portions of trial, which Petitioner's liberty was at stake, Petitioner had no counsel. See Tippins v. Walker, 77 F.3d 682(2nd Cir. 1996).

Counsel for Arias violated ethical standards set forth for attorneys, when he did not voluntarily withdraw after an obvious conflict of interest, total lack of enthusiasm when it came to keeping his client up to date on the events pertaining to her case, and his disregard for the break down in communication between him and his client.

Because of the aforementioned reasons, the Petitioner was subjected to both insufficient performance and prejudice as described in Strickland v. Washington, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052(9184). Had Espinosa been of even partial effectiveness, the Petitioner would not be serving the sentence that was imposed on her in this case.

CERTIFICATE OF SERVICE

I CERTIFY THAT A TRUE AND EXACT COPY
OF THE FOREGOING MOTION, HAS BEEN FORWARDED ON
THIS 26 DAY OF APRIL, 20 10,
TO THE FOLLOWING PARTY:

Victor Wild
1 Courthouseway
Boston, MA 02210

U.S. DISTRICT COURT
DISTRICT OF MASS.

2010 APR 29 P 2:11

FILED
IN CLERKS OFFICE

NAME: Esther Arias
NO: # 26214038

